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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,836	08/02/2001	Douglas A. Newberg	2153-0116P	4362

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EXAMINER

BEX, PATRICIA K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 10/15/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-9

# Office Action Summary

Application No.

09/919,836

Applicant(s)

NEWBERG, DOUGLAS A.

Examiner

P. Kathryn Bex

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10,12,14-21 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-17,20,21 and 23-26 is/are allowed.
- 6) ☒ Claim(s) 10,12,18,19 and 27-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The cancellation of claims 1-9, 11, 13, 22 and the addition of claims 23-34 is acknowledged

### ***Drawings***

2. The corrected or substitute drawings were received on August 07, 2002. These drawings are accepted by the Examiner.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 27 and 31 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. New claim 27, recites a "receptacle conveyor" for moving a receptacle to a filling station and a "mechanism for moving", for moving at least one receptacle from the filling station to the ejection port. The instant specification does not support two separate means for moving the receptacle from the inlet port to the filling station and to ejection port, see paragraph [0062]. This procedure is accomplished by the receptacle conveyance system 50. Same deficiency was found in claim 31.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10, 12, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Finsterwalder *et al* (USP 4,160,382).

Finsterwalder *et al* teaches sampling system for sampling radioactive samples comprising a sealed glovebox for receiving a plurality of receptacles 11 therein. The housing being sealed from the outside ambient environment. The system includes an empty receptacle holder 43 which is sealingly attached to an inlet port and full receptacle holder 37 which is communication with an ejection port and removably mounted through a hermetically sealed flange which is connected by a system of bolts (no reference number, Fig. 1). The system of Finsterwalder *et al* having a flowable material supplier, or injection port, 9 for supplying a flowable material to the receptacle and receptacle conveyor, or moving mechanism, 13 being movable to transport a receptacle to the filling station and to a removal station. Additionally, Finsterwalder *et al* teach comprises a piercing means to “open” the stopper, septum, of the receptacle.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 10, 12, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaarschmidt *et al* (USP 4,662,231).

Schaarschmidt *et al* teach a system for taking a sample of toxic and/or radioactive substance by introducing such a substance into a sample vessel. The system includes a housing 36 having an internal cavity sealed from the outside environment and a plurality of receptacles 32. The receptacles being fillable with a sample while within the internal cavity of the housing via sampling means 33. The system of Schaarschmidt *et al* teach a sealed container 46 disposed within the housing for receiving said plurality of receptacles after they have been filled. The system further comprising a flowable material supplier 19 which is operable to supply a flowable decontamination liquid to the plurality of receptacles (column 5, lines 1-20). The housing including an injection port and empty receptacle holder 30 and a filled receptacle holder 29, the holder being in communication with the injection port and sealed within the housing (see Fig 1).

Schaarschmidt *et al* does not specifically recite the filled receptacle holder being removably mounted to the housing, however Examiner contends that any conduit is "removable" with the appropriate tool. It would have been obvious to one of ordinary skill in the art at the time of the claimed invention to make the filled receptacle of Schaarschmidt *et al* removable, in

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order to access the interior portion of the conduit in case a receptacle becomes jammed inside.

Moreover, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (CCPA 1893).

***Allowable Subject Matter***

10. Claims 14-17, 20-21 and 23-26 are allowable.

11. The following is a statement of reasons for the indication of allowable subject matter: the instant claims are drawn to a system for collecting samples in receptacles within a sealed housing. While numerous sealed sampling system exist, none of the cited prior art teach a sealed housing comprising a filled receptacle holder which is sealed with the housing to form a barrier between the environment and the internal cavity of the housing and the ambient environment outside the housing. Wherein the filled receptacle holder is an integral tube which is separable into a plurality of filled receptacle compartments, a first of the plurality of compartments having an open end forming a seal with the housing and the last of the compartments having a closed distal end, each of the compartments being closable and able to containing at least one of the plurality of filled receptacles in an isolated manner.

***Conclusion***

12. No claims allowed.

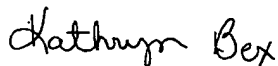
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Bex whose telephone number is (703) 306-5697. The examiner can normally be reached on Mondays-Thursdays, alternate Fridays from 6:00 am to 3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 308-4037.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

  
P. Kathryn Bex  
Patent Examiner  
AU 1743  
October 10, 2002

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700